



**HK v SON (Children’s Appeal Case E10 of 2021)
[2023] KEHC 19662 (KLR) (4 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19662 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CHILDREN’S APPEAL CASE E10 OF 2021**

HK CHEMITEI, J

JULY 4, 2023

BETWEEN

HK APPLICANT

AND

SON RESPONDENT

RULING

1. In her notice of motion dated July 13, 2022 the applicant herein prays that this court be pleased to allow the applicant to file her record of appeal out of time.
2. The application is premised on the grounds on the face of it and her supporting affidavit sworn on even date and a further affidavit dated April 12, 2023.
3. The applicant deponed that she filed the memorandum of appeal within the requisite time but was late in filing the record of appeal for reasons beyond her control. She said that she was shouldering the burden of the children after the respondent failed to comply with the orders of the trial court of maintaining the said minors.
4. She said that she believes she has a high chance on appeal and therefore she should be allowed to challenge the said judgement.
5. The respondent *vide* his replying affidavit sworn on December 5, 2022 has opposed the application vehemently arguing that the delay of one year without any reasonable cause was inordinate and that the applicant ought not to be allowed to benefit. He denied that the applicant was impecunious so as not to afford to file the record of appeal within the time provided.
6. He went on to state that he has been complying with the lower courts judgement and that if the applicant was unable to support the children then he should be allowed to have them.



7. He therefore prayed that the application ought to be disallowed as the applicant was not sincere and had not placed sufficient reasons to warrant this court allow the same.
8. The court directed the parties to file their written submissions which they have complied. The court has perused the same and does not wish to reproduce them here.
9. It is evident that the application of such nature to be allowed, the applicant must explain the cause or reasons for the delay, the length of the delay, the chances of the appeal succeeding and whether the respondent will suffer any prejudice.
10. The applicant indeed delayed for over one year after filing the memorandum of appeal. The reasons given in my view are spurious. There is no evidence that she was not in a position to deliver the record of appeal within the requisite time. There was no evidence of her impecuniousness or at all.
11. The length of the delay was never explained and the period of one year was too long. Further the issue of whether the appeal will succeed or not is not for this court to determine at the moment. At the appropriate time the court will do so after hearing the matter fully.
12. Will the respondent suffer any prejudice if the application is allowed.? To some extent yes because litigation must come to an end. Nevertheless, being a children's matter, the same ought to be viewed from an equity lens.
13. It appears that the only reason the applicant filed the appeal was because she was not satisfied with the judgement of the trial court which she felt that the amount to be shouldered by the respondent was too minimal against her expectations.
14. This being the case, the matter will still have to be determined as the parties under the *Children's Act* could still petition the court to enhance or reduce the same. In other words, children's matters are almost sui generis in the sense that the orders can still be varied depending on each circumstances or each case for that matter.
15. Taking the above reasoning, although the delay of one year is inordinate and no sufficient reason was advanced by the applicant, this court does not see much prejudice the respondent stands to suffer in the event that the application is allowed. He will still have the opportunity of defending his position at the appeal level.
16. In the premises, the application is hereby allowed, the applicant granted 30 days from the date hereinto file the record of appeal and in default the appeal to stand dismissed automatically.
17. Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 4TH DAY OF JULY, 2023.

H K CHEMITEI

JUDGE

